

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

FAIR ISAAC CORPORATION, a)	
Delaware corporation,)	
)	
Plaintiff,)	
)	Case No. 16-cv-1054 (WMW/DTS)
v.)	
)	
FEDERAL INSURANCE COMPANY,)	Jury Trial Demanded
an Indiana corporation, and ACE)	
AMERICAN INSURANCE)	
COMPANY, a Pennsylvania)	
corporation,)	
)	
Defendants.)	

FIFTH JOINT MOTION TO AMEND PRETRIAL SCHEDULING ORDER

Plaintiff Fair Isaac Corporation (“FICO”) and Defendants Federal Insurance Company (“Federal”) and ACE American Insurance Company (“ACE”) hereby jointly move the Court, pursuant to Fed. R. Civ. P. 16(b)(4) and D. Minn. L.R. 16.3, for an Order extending the deadlines set forth in the Court’s Fourth Amended Pretrial Scheduling Order (Dkt. 144) by thirty (30) days, except for the August 12, 2019 trial ready date. That date remains unchanged.

The parties also seek a continuance of the hearing on FICO’s pending Motion to Compel (Dkt. 147), now set for November 27 at 1:30 pm, to a date and time during the week of December 17. Defendants’ response to that Motion to Compel is due today, November 20, and that date does not change.

The Court possesses the inherent power to extend deadlines to control the disposition of the cases on its docket and to economically manage time and effort for

itself, for counsel, and for litigants. *First Lutheran Church v. the City of St. Paul*, Cv. No. 18-CV-954 (D. Minn. Nov. 14, 2018). The Court has discretion in deciding to exercise this power, and has an “affirmative duty” to “ensure that civil litigation is resolved not only fairly, but also without undue cost or delay” *Id.*; *see also Advisory Committee notes to the 1993 Amendment of Fed. R. Civ. P. 1.*

Here, good cause exists to grant the present Motion. The parties scheduled private mediation with retired Judge Jeff Keyes for two days on December 12-13. The parties must spend significant time in preparation for that mediation, including the exchange and analysis of facts and the preparation of fulsome mediation statements. This effort to prepare and attend the mediation will sacrifice their parties’ trial preparation (should the mediation not resolve the case). Neither party wants to sacrifice mediation preparation or discovery and trial preparation for the other. The persons attending from both Plaintiff and Defendants will have full authorization to settle the dispute, both on financial and business terms. The parties’ mediation statements are due on December 5.

In light of the scheduled mediation, the parties jointly seek a one-month extension of all deadlines in this case, except for the August 12, 2019 trial ready date, which remains unchanged. Presently, discovery closes on January 15, 2019. Opening expert reports are due seven days later, on January 22. Both parties are spending significant time and resources to finish discovery and simultaneously prepare expert reports. The parties have several depositions scheduled between now and December 12. Federal’s response to FICO’s Third Set of Document Requests is due on December 3. FICO’s response to Federal’s Second Set of Document Requests is due on December 12. While

the written discovery can proceed under the Rules, a postponement of deposition discovery and work on expert reports is necessary to refocus efforts on resolution of the case through mediation. If the case is not resolved, the parties will be unable to complete the remaining fact discovery without a 30-day extension of all deadlines. Given the significance of this case and the relief requested by Plaintiff, the resources spent on this discovery for both parties will be significant. Judicial resources will also be saved should the parties reach settlement.

ACCORDINGLY, the parties hereby move, by and through their undersigned counsel, for an extension of the deadlines in the Fourth Amended Pretrial Scheduling Order, as set forth in the redlined proposed Fifth Amended Pretrial Scheduling Order filed concurrently herewith. The parties also seek a continuance of the hearing on FICO's pending Motion to Compel (Dkt. 147), now set for November 27 at 1:30 pm, to a date and time during the week of December 17.

Dated: November 20, 2018

Respectfully submitted,

MERCHANT & GOULD P.C.

/s/ Heather Kliebenstein

Allen Hinderaker, MN Bar # 45787

Heather Kliebenstein, MN Bar # 337419

Michael A. Erbele, MN Bar # 393635

MERCHANT & GOULD P.C.

3200 IDS Center

80 South Eighth Street

Minneapolis, MN 55402-2215

Tel: (612) 332-5300

Fax: (612) 332-9081

ahinderaker@merchantgould.com

hkliebenstein@merchantgould.com

merbele@merchantgould.com

*Attorneys for Plaintiff Fair Isaac
Corporation*

/s/ Terrence J. Fleming

Terrence J. Fleming (#0128983)

tfleming@fredlaw.com

Lora M. Friedemann (#0259615)

lfriedemann@fredlaw.com

Leah Janus (#0337365)

ljanus@fredlaw.com

Christopher D. Pham (#0390165)

cpham@fredlaw.com

FREDRIKSON & BYRON, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402-1425
(612) 492-7000 (tel)
(612) 492-7077 (fax)

*Attorneys for Defendants Federal
Insurance Company and ACE American
Insurance Company*